

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ATM SHAFIQL KHALID,

Plaintiff,

vs.

CITRIX SYSTEMS, INC.,

Defendant.

Civil Action No. 2:16-cv-00650-JCC

ATM SHAFIQL KHALID'S ANSWER  
TO COUNTERCLAIMS AND THIRD  
PARTY DEFENDANT XENCARE  
SOFTWARE INC.'S ANSWER TO THIRD  
PARTY CLAIMS

CITRIX SYSTEMS, INC.,

Counterclaim and  
Third-Party Plaintiff,

vs.

ATM SHAFIQL KHALID,

XENCARE SOFTWARE, INC.

Counterclaim and  
Third-Party Defendants.

Plaintiff/Counterclaim-defendant ATM Shafiqui Khalid ("Mr. Khalid") and third-party Defendant, Xencare Software, Inc. ("Xencare") hereby respond to counterclaims and third-party claims made by Citrix Systems, Inc. ("Citrix") as follows:

ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 1

Civil Action No. 2:16-cv-00650-JCC

XENN-6-1001P07 ANS to CC\_Third Party

LOWE GRAHAM JONES PLLC

  
701 Fifth Avenue, Suite 4800  
Seattle, Washington 98104  
206.381.3300 • F: 206.381.3301

**NATURE OF THIS ACTION**

1  
2 1. Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
3 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
4 claims, and on that basis, the allegations are denied.

**PARTIES**

5  
6 2. Admitted.

7 3. Admitted.

8 4. Mr. Khalid and Xencare admit that Citrix is a Delaware corporation with a  
9 principal place of business in Broward County, Florida. Mr. Khalid and Xencare lack sufficient  
10 information or knowledge to form a belief as to the truth of the remaining allegations in this  
11 paragraph of Citrix's counterclaims and third-party claims, and on that basis, the remaining  
12 allegations are denied.

**JURISDICTION AND VENUE**

13  
14 5. Admitted.

15 6. Admitted.

16 7. Admitted.

17 8. Mr. Khalid and Xencare admit that a substantial portion of the events giving rise  
18 to his claims occurred in this district. Mr. Khalid and Xencare deny that venue is proper in this  
19 court. Any and all remaining allegations in this paragraph are denied.

**FACTS**

20  
21 9. Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
22 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
23 claims, and on that basis, the allegations are denied.

24 10. Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
25 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
26 claims, and on that basis, the allegations are denied.

27  
ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 2

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1           11.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
2 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
3 claims, and on that basis, the allegations are denied.

4           12.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
5 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
6 claims, and on that basis, the allegations are denied.

7           13.     Mr. Mr. Khalid and Xencare lack sufficient information or knowledge to form a  
8 belief as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
9 claims, and on that basis, the allegations are denied.

10          14.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
11 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
12 claims, and on that basis, the allegations are denied.

13          15.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
14 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
15 claims, and on that basis, the allegations are denied.

16          16.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
17 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
18 claims, and on that basis, the allegations are denied.

19          17.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
20 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
21 claims, and on that basis, the allegations are denied.

22          18.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
23 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
24 claims, and on that basis, the allegations are denied.

25          19.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
26 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
27 claims, and on that basis, the allegations are denied.

ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 3

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1           20.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
2 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
3 claims, and on that basis, the allegations are denied.

4           21.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
5 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
6 claims, and on that basis, the allegations are denied.

7           22.     Mr. Khalid admits that he was hired by Citrix in 2006 as a software engineer. Mr  
8 Khalid admits that after he was hired by Citrix part of his work over a period of three months  
9 was on a market research project involving mobile and virtualization. Mr. Khalid admits that he  
10 worked on the XenApp project. Mr. Khalid lacks sufficient information or knowledge to form a  
11 belief as to the truth of the allegation that he "has described his duties while at Citrix as working  
12 with the 'CTO Office to promote ideas in mobile and cloud areas.'" All remaining allegations in  
13 this paragraph are denied.

14           23.     Mr. Khalid admits that he signed an employee agreement with Citrix. All  
15 remaining allegations in this paragraph are denied.

16           24.     Mr. Khalid admits that he applied for the '219 and '637 Patent. Mr. Khalid denies  
17 all remaining allegations in this paragraph.

18           25.     Mr. Khalid admits that he is an inventor and that entities under his ownership and  
19 control applied for the '219 and '637 Patents. All remaining allegations in this paragraph are  
20 denied.

21           26.     Mr. Khalid admits that an application for the '219 Patent was filed February 16,  
22 2008 and does not claim priority to any earlier application. Mr. Khalid admits that he disclosed  
23 an invention entitled "Safe and Secure Program Execution Framework" on Exhibit B to his  
24 employment agreement with Citrix. All remaining allegations in this paragraph are denied.

25           27.     Mr. Khalid admits that an application for the '637 patent was filed November 22,  
26 2010. All remaining allegations in this paragraph are denied.

27           28.     Admitted.

ANSWER TO COUNTERCLAIMS AND

THIRD PARTY CLAIMS - 4

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1           29.     Admitted.

2           30.     Mr. Khalid admits that an entity named Xencare Software, Inc. was registered  
3 with the Washington State Secretary of State's office on or around December 30, 2011 and that  
4 certain property of Xencare Software, Inc's predecessor (a sole proprietorship operating as  
5 Xencare Software since 2008), including the '219 Patent, became owned by Xencare Software  
6 Inc. All remaining allegations of this paragraph are denied.

7           31.     Mr. Khalid admits he has refused to assign rights to the '219 and '637 Patents to  
8 Citrix. All remaining allegations in this paragraph are denied.

9           32.     The allegations in this paragraph are legal conclusions to which no response is  
10 necessary. To the extent facts are alleged in this paragraph, they are denied.

11          33.     Khalid and Xencare admit that they adopted the term "XenCare" after Citrix  
12 adopted certain other marks using the word "Xen." All other allegations in this paragraphs are  
13 denied.

14          34.     The allegations in this paragraph are legal conclusions to which no response is  
15 necessary. To the extent facts are alleged in this paragraph, Mr. Khalid and Xencare lack  
16 sufficient information or knowledge to form a belief as to the truth of the allegations and on that  
17 basis, the allegations are denied.

18          35.     Denied.

19          35.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
20 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
21 claims, and on that basis, the allegations are denied.

22          36.     Denied.

23          37.     Denied.

24          38.     Denied.

25          39.     Denied.

26          40.     Denied.

27  
ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 5

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1           41.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
2 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
3 claims, and on that basis, the allegations are denied.

4           42.     Mr. Khalid and Xencare lack sufficient information or knowledge to form a belief  
5 as to the truth of the allegations in this paragraph of Citrix's counterclaims and third-party  
6 claims, and on that basis, the allegations are denied.

7           43.     Denied.

8           44.     Denied.

9                   **FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT**

10          45.     Mr. Khalid and Xencare incorporate and restate their responses to all previous  
11 paragraphs as if fully set forth herein.

12          46.     Denied.

13                   **SECOND CAUSE OF ACTION – BREACH OF CONTRACT**

14          47.     Mr. Khalid and Xencare incorporate and restate their responses to all previous  
15 paragraphs as if fully set forth herein.

16          48.     Denied.

17          49.     Denied.

18          50.     Denied.

19          51.     Denied.

20                   **THIRD CAUSE OF ACTION – UNJUST ENRICHMENT**

21          52.     Mr. Khalid and Xencare incorporate and restate their responses to all previous  
22 paragraphs as if fully set forth herein.

23          53.     Denied.

24          54.     Denied.

25          55.     Denied.

26          56.     Denied.

27                   **FOURTH CAUSE OF ACTION – INJUNCTIVE RELIEF**

ANSWER TO COUNTERCLAIMS AND

THIRD PARTY CLAIMS - 6

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1 57. Mr. Khalid and Xencare incorporate and restate their responses to all previous  
2 paragraphs as if fully set forth herein.

3 58. Denied.

4 **FIFTH CAUSE OF ACTION – SPECIFIC PERFORMANCE**

5 59. Mr. Khalid and Xencare incorporate and restate their responses to all previous  
6 paragraphs as if fully set forth herein.

7 60. Denied.

8 **SIXTH CAUSE OF ACTION – LANHAM ACT (15 U.S.C. § 1114 *ET. SEQ.*)**

9 **TRADEMARK INFRINGEMENT**

10 61. Mr. Khalid and Xencare incorporate and restate their responses to all previous  
11 paragraphs as if fully set forth herein.

12 62. Denied.

13 63. Denied.

14 64. Denied.

15 **SEVENTH CAUSE OF ACTION – LANHAM ACT (15 U.S.C. § 1125(A))**

16 **UNFAIR COMPETITION**

17 65. Mr. Khalid and Xencare incorporate and restate their responses to all previous  
18 paragraphs as if fully set forth herein.

19 66. Denied.

20 67. Denied.

21 68. Denied.

22 **AFFIRMATIVE DEFENSES**

23 A. Citrix fails to state a claim upon which relief can be granted.

24 B. Citrix's claims are barred in whole or in part by laches.

25 C. Citrix's claims are barred in whole or in part by estoppel.

26 D. Citrix's claims are barred in whole or in part by the doctrine of unclean hands.

27 E. Citrix's claims are barred in whole or in part by applicable statutes of limitation

ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 7

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1 F. Citrix lacks standing to bring one or more claims.

2 G. Citrix's claims are barred in whole or in part by express or implied license.

3 **PRAYER FOR RELIEF**

4 Mr. Khalid and Xenxare deny that Citrix is entitled to any of the relief prayed for in its  
5 counterclaims and third-party complaint.

6  
7 DATED this 23rd day of June, 2016.

8  
9 LOWE GRAHAM JONES<sup>PLLC</sup>

10 s/Mark P. Walters

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17  
18 *Attorneys for ATM Shafiqul Khalid and*  
19 *XenCare Software Inc.*

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ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 8

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**CERTIFICATE OF SERVICE**

I certify that on June 23, 2016 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and served the following attorney of record:

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LOWE GRAHAM JONES<sup>PLLC</sup>

s/Laurie Gero  
Laurie Gero, Paralegal

ANSWER TO COUNTERCLAIMS AND  
THIRD PARTY CLAIMS - 9

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